

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1625-MWD-E TCEQ ID: RN101701795 CASE NO.: 34795**  
**RESPONDENT NAME: CITY OF HENRIETTA**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Approximately one mile northeast of the intersection of U.S. Highway 287 and State Highway Loop 510 in Clay County

**TYPE OF OPERATION:** Wastewater treatment facility

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on June 23, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Harvey Wilson, Waste Enforcement Section, MC 149, (512) 239-0321

**TCEQ Regional Contact:** Mr. Cliff Moore, Abilene Regional Office, MC R-3, (325) 698-6115

**Respondent:** The Honorable James Stanford, Mayor, City of Henrietta, P.O. Box 409, Henrietta, Texas 76365

**Respondent's Attorney:** Ms. Diana Granger, Attorney, Knight & Partners, Executive Office Terrace, 223 West Anderson Lane, Suite A-105, Austin, Texas 78752

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>  None</p> <p><b>Date of Investigation Relating to this Case:</b>  September 11, 2007</p> <p><b>Date of NOE Relating to this Case:</b>  October 11, 2007</p> <p><b>Background Facts:</b> This case was referred to Litigation on February 5, 2008. Following settlement negotiations, the respondent signed the Agreed Order on April 21, 2008.</p> <p><b>MWD:</b>  Failed to comply with permit limits in October and November 2006 [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010454002, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$18,700</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b>  \$2,200/\$16,500</p> <p>The Respondent has paid \$2,200 of the administrative penalty. The remaining amount of \$16,500 of the administrative penalty shall be payable in 11 monthly payments of \$1,500 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>  Discharge was major pursuant to load ratio calculator.</p>	<p><b>Ordering Provisions:</b></p> <p>Within 60 days, the Respondent shall submit written certification of compliance with the effluent limits of TPDES Permit No. WQ001045002.</p>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	1-Oct-2007	Screening	11-Oct-2007	EPA Due	
	PCW	16-Oct-2007				

## RESPONDENT/FACILITY INFORMATION

Respondent	City of Henrietta		
Reg. Ent. Ref. No.	RN101701795		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	34795	No. of Violations	1
Docket No.	2007-1625-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Enf. Coordinator	Harvey Wilson
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$	Limit Minimum	\$0	Maximum
		\$10,000	

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	90% Enhancement	Subtotals 2, 3, & 7	\$9,000
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Notes

A 90% enhancement is recommended because the Respondent has one Agreed Order with Denial (2003-1552-MWD-E), 13 self-reported effluent violations and one NOV for the same or similar violations.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Extraordinary

Before NOV

NOV to EDPRP/Settlement Offer

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts

\$92

Approx. Cost of Compliance

\$1,000

0% Enhancement\*

\*Capped at the Total EB \$ Amount

Subtotal 6

\$0

## SUM OF SUBTOTALS 1-7

Final Subtotal

\$19,000

-2%

Adjustment

-\$300

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommended reduction in penalty amount to prevent double counting of self-reported violations.

Final Penalty Amount

\$18,700

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$18,700

## DEFERRAL

0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

## PAYABLE PENALTY

\$18,700

Screening Date 11-Oct-2007

Docket No. 2007-1625-MWD-E

PCW

Respondent City of Henrietta

Policy Revision 2 (September 2002)

Case ID No. 34795

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN101701795

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
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NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	14	70%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 90%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

A 90% enhancement is recommended because the Respondent has one Agreed Order with Denial (2003-1552-MWD-E), 13 self-reported effluent violations and one NOV for the same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 90%

<b>Screening Date</b> 11-Oct-2007 <b>Respondent</b> City of Henrietta <b>Case ID No.</b> 34795 <b>Reg. Ent. Reference No.</b> RN101701795 <b>Media [Statute]</b> Water Quality <b>Enf. Coordinator</b> Harvey Wilson <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2007-1625-MWD-E <div style="text-align: right;"><b>PCW</b></div> <div style="text-align: right; font-size: small;"> <i>Policy Revision 2 (September 2002)</i>  <i>PCW Revision September 19, 2007</i> </div>																		
<b>Rule Cite(s)</b> Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010454002 Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)																			
<b>Violation Description</b> Failed to comply with permit effluent limits in October and November 2006, as depicted in the attached table.																			
<b>Base Penalty</b> <input style="width: 100px;" type="text" value="\$10,000"/>																			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																			
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Release</th> <th colspan="3" style="text-align: center;">Harm</th> <th rowspan="2" style="width: 15%;"></th> </tr> <tr> <th></th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> </tr> </thead> <tbody> <tr> <td>Actual</td> <td style="text-align: center;">x</td> <td></td> <td></td> <td rowspan="2" style="vertical-align: middle;"> <b>Percent</b> <input style="width: 50px;" type="text" value="50%"/> </td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Release	Harm					Major	Moderate	Minor	Actual	x			<b>Percent</b> <input style="width: 50px;" type="text" value="50%"/>	Potential			
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<b>&gt;&gt; Programmatic Matrix</b>																			
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					<b>Percent</b> <input style="width: 50px;" type="text" value="0%"/>														
Matrix Notes	A simplified model was used to evaluate Carbonaceous Biochemical Oxygen Demand and Ammonia Nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Dissolved Oxygen and Total Suspended Solids were also considered. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors.																		
<b>Adjustment</b> <input style="width: 100px;" type="text" value="\$5,000"/>																			
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<b>Violation Base Penalty</b> <input style="width: 100px;" type="text" value="\$10,000"/>																			
<b>Economic Benefit (EB) for this violation</b>																			
<table style="width: 100%;"> <tr> <td style="width: 50%;"> <b>Estimated EB Amount</b> <input style="width: 100px;" type="text" value="\$92"/> </td> <td style="width: 50%;"> <b>Statutory Limit Test</b> </td> </tr> </table>		<b>Estimated EB Amount</b> <input style="width: 100px;" type="text" value="\$92"/>	<b>Statutory Limit Test</b>																
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<b>Violation Final Penalty Total</b> <input style="width: 100px;" type="text" value="\$18,700"/>																			
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width: 100px;" type="text" value="\$18,700"/>																			

## Economic Benefit Worksheet

Respondent: City of Henrietta  
Case ID No. 34795  
Reg. Ent. Reference No. RN101701795  
Media: Water Quality  
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	1-Oct-2006	31-Jul-2008	1.8	\$92	n/a	\$92

Notes for DELAYED costs

The estimated cost for additional oversight and sampling which could have reduced or alleviated the exceedances. The Date Required is the day the noncompliance began. The Final Date is the estimated compliance date.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$92

# Compliance History

Customer/Respondent/Owner-Operator: CN600691893 CITY OF HENRIETTA Classification: Average Rating: 2.66

Regulated Entity: RN101701795 SOUTH PLANT Classification: Average Site Rating: 0/61

ID Number(s): WASTEWATER PERMIT WQ0010454002  
WASTEWATER PERMIT TPDES0022314  
WASTEWATER PERMIT TX0022314  
WASTEWATER PERMIT WQ0010454002  
WASTEWATER PERMIT TPDES0022314  
WASTEWATER LICENSING LICENSE WQ0010454002

Location: Located approximately one mile northeast of the intersection of U.S. Highway 287 and State Highway Loop 510, Henrietta, Clay County Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: October 09, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 09, 2002 to October 09, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Harvey Wilson Phone: 239-0321

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 08/07/2005 ADMINORDER 2003-1552-MWD-E
- Classification: Moderate
- Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]
- Rqmt Prov: IELM Requirements No.1 PERMIT  
Description: Failure to maintain compliance with permitted effluent limits.
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |    |            |          |
|----|------------|----------|
| 1  | 10/11/2002 | (164947) |
| 2  | 10/11/2002 | (164944) |
| 3  | 12/12/2002 | (164956) |
| 4  | 12/12/2002 | (164953) |
| 5  | 12/12/2002 | (164950) |
| 6  | 03/03/2003 | (164929) |
| 7  | 03/03/2003 | (164959) |
| 8  | 03/31/2003 | (164932) |
| 9  | 04/07/2003 | (164935) |
| 10 | 05/14/2003 | (298153) |
| 11 | 06/08/2003 | (249494) |

12	09/02/2003	(298154)
13	09/02/2003	(298156)
14	11/21/2003	(298155)
15	01/14/2004	(259946)
16	02/25/2004	(298157)
17	02/25/2004	(298158)
18	02/25/2004	(298159)
19	02/25/2004	(298160)
20	02/25/2004	(298161)
21	04/19/2004	(353240)
22	04/19/2004	(353241)
23	04/19/2004	(353242)
24	08/02/2004	(353244)
25	08/02/2004	(353245)
26	08/03/2004	(353243)
27	09/20/2004	(353246)
28	11/12/2004	(382447)
29	11/12/2004	(382448)
30	12/06/2004	(382449)
31	01/25/2005	(348134)
32	02/14/2005	(420307)
33	02/14/2005	(420313)
34	02/14/2005	(420314)
35	04/15/2005	(420308)
36	04/15/2005	(420309)
37	05/20/2005	(420310)
38	07/05/2005	(420311)
39	07/22/2005	(420312)
40	08/11/2005	(441370)
41	09/12/2005	(441371)
42	02/13/2006	(469427)
43	02/13/2006	(469428)
44	02/13/2006	(469429)
45	02/13/2006	(469430)
46	05/19/2006	(498884)
47	05/19/2006	(498885)
48	06/06/2006	(498886)
49	06/29/2006	(498887)
50	07/28/2006	(520900)
51	07/28/2006	(520901)
52	08/30/2006	(520902)
53	10/02/2006	(576822)
54	12/22/2006	(576824)
55	01/29/2007	(576826)
56	02/12/2007	(576825)
57	03/16/2007	(576818)
58	03/16/2007	(576819)
59	04/23/2007	(576823)
60	04/27/2007	(557648)
61	06/14/2007	(576820)
62	06/14/2007	(576821)
63	06/28/2007	(566032)
64	10/04/2007	(594086)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/30/2002 (164956)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2002 (164959)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]



Description:	Failure to meet the limit for one or more permit parameter	
Date:	02/28/2003	(164932)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	04/30/2003	(298153)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	05/31/2003	(298154)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	06/30/2003	(298155)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	07/31/2003	(298156)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	08/31/2003	(298157)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	09/30/2005	(469427)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	10/31/2005	(469428)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	01/31/2006	(498884)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	10/31/2006	(576824)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	11/30/2006	(576825)
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Date:	04/23/2007	(557648)
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 317 317.4(a)(8) 30 TAC Chapter 317 317.7(i)	
Description:	Failure to provide an annual certification of the reduced pressure backflow assembly (RPBA) on the public water supply line located at the wastewater treatment plant.	
Self Report?	NO	Classification: Moderate

Citation:	30 TAC Chapter 317 317.6(b)(1)(D)		
Description:	Failure to provide a self contained breathing apparatus (SCBA) for use by plant personnel.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010454-002		
Description:	Failure to meet the chlorine residual limit at the time of the investigation.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010454-002		
Description:	Failure to meet permit effluent limits based upon a twelve month record review of DMR data.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.11(b)		
Description:	Failure to meet the analytical hold time for chlorine residual analysis and dissolved oxygen analysis.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010454-002		
Description:	Failure to provide a written report to the TCEQ within 5 days of becoming aware of the November 2006 effluent permit exceedances.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.6 30 TAC Chapter 319, SubChapter A 319.9(c)		
Description:	Failure to calibrate the pH meter with buffers which bracket the expected pH value measured.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010454-002		
Description:	Failure to prevent and mitigate the accumulation of sludge in the receiving stream.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010454-002		
Description:	Failure to correctly report effluent data on the August 2006 DMR.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF HENRIETTA,  
RN101701795**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1625-MWD-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Henrietta ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and the City represented by Diana Granger of the law firm of Knight & Partners, presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The City owns and operates a wastewater treatment facility located approximately one mile northeast of the intersection of U. S. Highway 287 and State Highway Loop 510 in Clay County, Texas (the "Facility").
2. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused pollution of any water in the state under the Texas Water Code.

3. During an inspection on September 11, 2007, a TCEQ Central Office investigator documented the City had failed to comply with permit limits in October and November 2006 for treated wastewater discharge as indicated in the table below:

Effluent Violations Table

Monthly/ Year	Dissolved Oxygen minimum 4 mg/L	T S S Daily Avg 15 mg/L	T S S Single Grab 60 mg/L	NH <sub>3</sub> N Daily Avg 9.8 lb/day	NH <sub>3</sub> N Daily Avg 3 mg/L	CBOD Daily Avg 10 mg/L	CBOD Single Grab 35 mg/L
October 2006	3.20	32.75	100	C	11.03	C	C
November 2006	C	C	C	15.47	11.46	15.6	38

T S S = Total Suspended Solids    NH<sub>3</sub>N = Ammonia Nitrogen    CBOD = Carbonaceous Biochemical Oxygen Demand  
mg/L = milligrams per liter    lb/day = pounds per day    C = compliant    Avg = Average

4. The City received notice of the violations on or about October 15, 2007.

### CONCLUSIONS OF LAW

- As evidenced by Finding of Fact Nos. 1 and 2, the City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002 and ch. 26 and the rules of the Commission.
- As evidenced by Finding of Fact No. 3, the City failed to comply with permit limits in October and November 2006, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010454002, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a).
- Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
- An administrative penalty in the amount of eighteen thousand seven hundred dollars (\$18,700.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid two thousand two hundred dollars (\$2,200.00) of the administrative penalty. The remaining amount of sixteen thousand five hundred dollars (\$16,500.00) shall be payable in eleven monthly payments of one thousand five hundred dollars (\$1,500.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the City fails to timely and satisfactorily comply with the payment requirements of

this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the City to meet the payment schedule of this Agreed Order constitutes the failure by the City to timely and satisfactorily comply with all of the terms of this Agreed Order.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of eighteen thousand seven hundred dollars (\$18,700.00) as set forth in Conclusion of Law No. 4 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of Henrietta; Docket No. 2007-1625-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The City shall undertake the following technical requirement:

Within 60 days after the effective date of this Agreed Order, the City shall submit written certification of compliance with the effluent limits of TPDES Permit No. WQ001045002. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the

information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

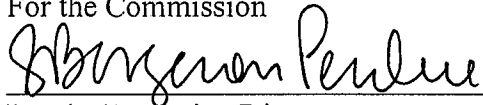
3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/25/08

Date

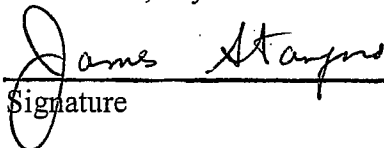
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Henrietta. I represent that I am authorized to agree to the attached Agreed Order on behalf of the City of Henrietta, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Henrietta waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on the City's compliance history;
- Greater scrutiny of any permit applications submitted by the City;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against the City;
- Automatic referral to the Attorney General's Office of any future enforcement actions against the City; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

4/21/2008

Date

JAMES STANFORD

Name (printed or typed)

Authorized Representative

City of Henrietta

MAYOR

Title